an unconstitutional statute and his unlawful acts committed under unlawful usurpation of authority, pointing out the fact that a prosecutor's act may be so preposterously unlawful (though not unconstitutional) as to justify intervention by equity. In further answer to this reasoning we may observe that no more in a case of this kind is there sanctioned an inquiry by a court of equity into disputed questions of fact than in cases for injunction against proceedings under unconstitutional statutes, so that the field of criminal litigation in which the jury is the sacrosanct tribunal is avoided. And again, Hough, J's position is allied with the spirit of modern legislation providing for declaratory judgments. Mich. P. A., 1919, Sec. 150. See applying declaratory judgment to a criminal question, *Dyson* v. *Attorney General,* (1912) 1 Ch. 158.

INJUNCTION—MASTER AND SERVANT—INJUNCTION TO ENFORCE RESTRICTIVE COVENANT DENIED.—Defendant was an ordinary employee of complainant, engaged in operating a film-coating machine, and possessed of no peculiar skill except such as he acquired because of his specialized employment in complainant's service. He terminated his employment with complainant and started to work for competitor in violation of his restrictive covenant that he would not work for competitor in the United States for two years after leaving complainant's employ, except in Alaska. Complainant seeks injunction restraining him from so working, and from revealing trade secrets. *Held,* no grounds for injunction restraining defendant from working for competitor; but restrained defendant from revealing trade secrets of complainant. *Eastman Kodak Co.* v. *Warren,* (1919) 178 N. Y. S. 14.

This court assimilates this covenant to those of indirect enforcement of personal service contracts, and therefore denies the injunction because the employee has no special skill. *Oppenheimer* v. *Hirsch,* 5 App. Div. 232; *Osius* v. *Hinchman,* 150 Mich. 603; *Sims* v. *Burnette,* 55 Fla. 702, 16 L. R. A. (N. S.) 389 and note, 15 Ann Cas. 690 and note. According to what seems to be the better view, on the other hand, such covenants are treated like similar covenants in restraint of trade connected with the sale of business, and injunctive relief is given to the employer without reference to the skill of the employee. *Marvel* v. *Jonah,* 83 N. J. Eq. 295, Ann. Cas. 1916 C 185 and note; *Freudenthal* v. *Espey,* 45 Colo. 488, 26 L. R. A. (N.S.) 961 and note; also 15 Ann. Cas. 694, and *Eureka Laundry Co.* v. *Long,* 146 Wis. 205. These courts proceed upon the theory that the covenantee's remedy at law is inadequate,—the damages accruing from day to day, and it being impossible to ascertain the money loss sustained with any degree of accuracy. Such covenants must be construed with reference to the object sought to be secured by them,—and obviously here it was to prevent the employee from using the skill, gained in complainant's service, for the benefit of his competitor, and to help complainant maintain its monopoly in the trade. In these cases of valid contracts in restraint of trade we are not confronted with the difficulty found in cases of indirect enforcement of personal service contracts, such as *Lumley* v. *Wagner,* 1 De. G. M. & G. 604, where only partial performance can be decreed, and the damages at law being at best a mere conjecture, an injunction will generally be given. But, in giving such an injunction, equity will often stop to weigh the incon-

venience and hardship on the defendant against the benefits and advantages to the plaintiff, and the court's decision in this case showed that the scales were carried in favor of the defendant. See also 16 MICH. L. REV. 647.

INTERNAL REVENUE—FEDERAL ESTATE TAX—CHARGE ON RESIDUARY ESTATE.—Suit for instructions by executors against the trustee under testator's will, and others. *Held,* The Federal Estate Tax imposed by Act of Congress Sept. 8, 1916, as amended by Act March 3, 1917, and Act October 3, 1917, is chargeable entirely against the residuary estate and not apportionable pro rata among all devisees and legatees. *Plunkett* v. *Old Colony Trust Co.* (Mass., 1919), 124 N. E. 265.

The court in this case based its decision on the fact that the tax is characterized, in the titles of the relevant sections of the statutes, as an "Estate Tax," and that it is "imposed upon the transfer of each net estate of every decedent," and is to be paid out of the estate before distribution; fortified by two further considerations, viz. (1) the contrast between the terms of these acts and those of the War Revenue Act of 1898, (30 U. S. Stats. at Large 464), which imposed a tax on legacies and distributive shares; and (2) the design to establish an estate tax rather than a legacy tax, as clearly manifested in the report of the Ways and Means Committee of the House of Representatives, to which the bill had been referred. Though the present case treats the tax as a charge upon the residue, the suggestion in the final paragraph of the opinion that the testator might have provided in his will for its ultimate incidence at some other point seems deserving of greater consideration. In the case of a will executed before the passage of an act, giving legacies to collateral relatives, and naming testator's children as residuary legatees, it was held unjust to the latter to deduct the tax *in toto* from he residue as in the case of administration expenses, and accordingly the tax was apportioned among the several legacies—*In re Douglass' Estate,* 171 N. Y. S. 956. This point was also given great consideration by the lower court *In re Hamlin,* 172 N. Y. S. 787, where the tax was charged to the residuary estate because the will contained no specific directions for apportionment; affirmed in 226 N. Y. 407, where the decision was based chiefly, as in the principal case, on the intention of Congress. In *Fuller* v. *Gale,* 78 N. H. 544, the tax was directed to be paid out of the estate and charged pro rata to each beneficiary, though the court indicates that it would have given effect to an express direction by the testator to the contrary. It is submitted that this decision was wrong, inasmuch as the legacies were for definite amounts, which seems inconsistent with an intention to give these definite amounts less the tax.

LIBEL AND SLANDER—QUALIFIED PRIVILEGES—COMMENT ON PUBLIC ACTS OF PUBLIC OFFICIALS.—The defendant publishing company published comments and criticisms in its newspaper upon the punishment of prisoners in the penitentiary of which the plaintiff was warden. This included the publication of a convict's letter, stating that a person had been strung up with his hands above his head to force a confession. Action for libel brought by the plaintiff warden and the court found, that the evidence showed the matter to be